

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District of South Dakota	
Name (under which you were convicted): HENRY CHASE ALONE		Docket or Case No.: 5:21-cv-5017 22-5020	
Place of Confinement: USP Tucson		Prisoner No.: 13671-273	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		HENRY CHASE ALONE	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:
The Honorable Jeffrey L. Viken, Senior United States District Judge for the District of South Dakota at Rapid City

 (b) Criminal docket or case number (if you know): 5:18-cr-50117-1
2. (a) Date of the judgment of conviction (if you know): 12/17/2019
 (b) Date of sentencing: 12/16/2019
3. Length of sentence: 900 months' imprisonment; Lifetime supervised release
4. Nature of crime (all counts):
 Counts One & Two: 18 U.S.C. §§ 2251(a) and (e), Sexual Exploitation of a Minor; Count Three: 18 U.S.C. §1153 and SDCL § 22-22A-3 Aggravated Incest, SDCL § 22-22A-3.
5. (a) What was your plea? (Check one)
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Eighth Circuit

(b) Docket or case number (if you know): 19-3753

(c) Result: Affirmed

(d) Date of result (if you know): 9/24/2020

(e) Citation to the case (if you know): 822 Fed.Appx. 513 (8th Cir. 2020)

(f) Grounds raised:

1. THE DISTRICT COURT IMPROPERLY ADMITTED VIDEO EVIDENCE AT TRIAL; 2. CHASE ALONE'S 75-YEAR SENTENCE IS SUBSTANTIVELY UNREASONABLE. 3. STANDARD CONDITION TWELVE OF CHASE ALONE'S SUPERVISED RELEASE IS UNCONSTITUTIONAL

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes

☐

No

☒

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒

No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: United States District Court for the District of South Dakota

(2) Docket or case number (if you know): Same

(3) Date of filing (if you know): 3/22/2021

(4) Nature of the proceeding: Motion to Vacate, Set Aside or Correct sentence pursuant to 28:2255

(5) Grounds raised: Counsel was constitutionally ineffective for failing to seek to suppress evidence in the underlying criminal case.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Voluntary Dismissed w/o prejudice

(8) Date of result (if you know): 6/1/2021

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

-
12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Mr. Chase Alone was Denied the Effective Assistance of Counsel During the Plea Negotiation Stage and With Respect to the Decision to Plead Guilty or Proceed to Trial

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Facts set forth in contemporaneously submitted Memorandum Brief in Support of Motion to Vacate, Set Aside, or Correct Sentence, Section IV.A.2-4.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel may be initially presented in a Section 2255 proceeding. *Massaro v. United States*, 538 U.S. 500, 155 L.Ed.2d 714, 123 S.Ct. 1690 (2003).

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Mr. Chase Alone was Denied the Effective Assistance of Counsel at Trial, as a Result of Counsel's Failure to Present Available Exculpatory Witnesses

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Facts set forth in contemporaneously submitted Memorandum Brief in Support of Motion to Vacate, Set Aside, or Correct Sentence, Section IV.B.2-3.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of ineffective assistance of counsel may be initially presented in a Section 2255 proceeding. *Massaro v. United States*, 538 U.S. 500, 155 L.Ed.2d 714, 123 S.Ct. 1690 (2003).

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The claims of ineffective assistance of counsel were not previously presented. Such claims are properly initially presented in a Section 2255 motion. *Massaro v. United States*, 538 U.S. 500 (2003).

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

Asst Fed. Public Defender Jennifer R. Albertson, 655 Omaha, Ste 100, Rapid City, SD 57701

(b) At the arraignment and plea:

Asst Fed. Public Defender Jennifer R. Albertson, 655 Omaha, Ste 100, Rapid City, SD 57701

(c) At the trial:

Asst Fed. Public Defender Jennifer R. Albertson, 655 Omaha, Ste 100, Rapid City, SD 57701

(d) At sentencing:

STEPHEN D. DEMIK, 1617 Sheridan Lake Road, Rapid City, SD 57702

(e) On appeal:

STEPHEN D. DEMIK, 1617 Sheridan Lake Road, Rapid City, SD 57702

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

re-sentencing, as if he had accepted the prosecution's 15-year plea offer (Ground One remedy); a new trial with the effective assistance of counsel to present available exculpatory witnesses (Ground Two remedy)

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on February 14, 2022.
(month, date, year)

Executed (signed) on February 14, 2022 (date)



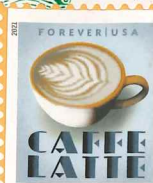
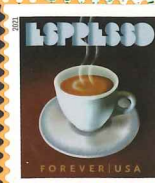
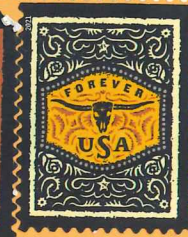
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Henry Chase Alton
Reg No. 13671-273
U.S.P., TUCSON
P.O. Box 24550
TUCSON, AZ 85734.



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